

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KENNETH B. BYRD JR.
Claimant

VS.

MARTIN TRANSPORTATION
Respondent

AND

ACCIDENT FUND INS. CO. OF AMERICA
Insurance Carrier

Docket No. **1,052,968**

ORDER

Respondent and its insurance carrier appealed the January 6, 2011 Preliminary Decision entered by Administrative Law Judge Marcia Yates Roberts.

ISSUES

At the preliminary hearing on January 6, 2011, claimant sought temporary total disability beginning September 24, 2010. The respondent denied the state of Kansas had jurisdiction over claimant's workers compensation claim.

The Administrative Law Judge (ALJ) denied claimant's request for temporary total disability benefits finding claimant failed to present medical evidence that he was temporarily and totally disabled. The ALJ further determined that any other issues were moot based upon the denial of temporary total disability benefits.

Respondent, however, contends the ALJ erred by failing to address whether this claim falls under the jurisdiction of the Kansas Workers Compensation Act. Respondent contends, in part:

Respondent appeals on the basis that there is no jurisdiction for this claim in Kansas. Respondent asserted this defense at the preliminary hearing and Judge Yates did not rule on it. Respondent respectfully submits that Judge Yates had no authority to make any decision in the case without first ruling on the jurisdiction issue because if there is no jurisdiction for this claim in Kansas, then Judge Yates

had no authority to act further and should have dismissed the claim for lack of jurisdiction.¹

Respondent requests the entire Board to review and decide this appeal “[g]iven the importance of this jurisdiction issue on the future of this claim. . .” In short, respondent requests the Board to find a lack of jurisdiction as claimant’s base of operations on the date of accident and for the preceding nine months was in the State of Missouri and, therefore, Missouri was claimant’s principal place of employment for purposes of the Kansas Workers Compensation Act.

Claimant argues the Board lacks jurisdiction to review the Preliminary Decision as the ALJ merely addressed whether claimant was temporarily and totally disabled, which is not an appealable issue under K.S.A. 44-534 a(a)(2). Accordingly, claimant maintains this appeal should be dismissed. In the alternative, claimant argues that he performed 60 percent or more of his work within the state of Kansas over the term of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the undersigned Board Member finds and concludes:

This claim went before the ALJ for a preliminary hearing on January 6, 2011, to address claimant’s request for temporary total disability benefits. At the hearing respondent specifically raised the issue of whether this claim fell under the Kansas Workers Compensation Act. Before taking evidence, the ALJ stated, in part:

JUDGE YATES: And the respondent’s position is that there is no Kansas jurisdiction, that Kansas was not the claimant’s principal place of employment, and therefore, I do not have any jurisdiction to hear this case. Is that pretty much the essence of your defense?

MR. RICHERSON: Yes, Your Honor.²

Nonetheless, the ALJ did not address the question of jurisdiction in the January 6, 2011, Preliminary Decision.

The Workers Compensation Act provides that upon a preliminary finding that an injury is compensable, the ALJ may make a preliminary award of medical benefits and

¹ Respondent’s Appl. for Review (filed January 24, 2011) at 1.

² P.H. Trans. at 6-7.

temporary total disability compensation pending a full hearing on the claim.³ And from such preliminary award, the Board has jurisdiction to review findings pertaining to the following disputed issues:

- (1) did the worker sustain an accidental injury;
- (2) did the injury arise out of and in the course of the employee's employment;
- (3) did the worker provide the employer with timely notice and with timely written claim; and,
- (4) do certain defenses apply.

And the term 'certain defenses' refers to defenses that challenge the compensability of the claim.⁴

The Workers Compensation Act provides that the Board has exclusive jurisdiction to review the decisions, orders, and awards of compensation entered by the administrative law judges under the Act. And those reviews are limited to the questions of law and fact as shown by a transcript of the evidence and proceedings before the judge.⁵

Respondent maintains this claim is not compensable under the Kansas Workers Compensation Act because (1) the accident occurred outside Kansas, (2) the contract of employment was formed outside Kansas, and (3) claimant's principal place of employment was other than Kansas.⁶ Accordingly, respondent has raised a defense or issue that goes to the compensability of the claim and the jurisdiction of the Kansas Division of Workers Compensation. But the ALJ failed to address that issue.

The preliminary hearing statute contemplates that parties might challenge whether an accident falls under the provisions of the Workers Compensation Act. In other words, such jurisdictional challenge is a viable defense that may be asserted at a preliminary hearing and the issue should be addressed when properly raised. The undersigned Board Member concludes the ALJ erred by failing to address respondent's jurisdictional challenge before deciding the issue of whether claimant was rendered temporarily and totally disabled by his alleged work-related injury. Therefore, the ALJ's Preliminary Decision

³ K.S.A. 44-534a(a)(2).

⁴ *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 672 (1999).

⁵ K.S.A. 44-555c(a).

⁶ See K.S.A. 44-506.

should be set aside and this claim remanded to the ALJ with directions to make findings and to rule upon that issue.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁷ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2010 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.⁸

WHEREFORE, this claim is remanded to the ALJ to address the issue of whether this claim falls under the jurisdiction of the Kansas Workers Compensation Act. The Board does not retain jurisdiction over this claim.

IT IS SO ORDERED.

Dated this _____ day of April, 2011.

HONORABLE DAVID A. SHUFELT
BOARD MEMBER

c: David A. Slocum, Attorney for Claimant
Bill W. Richerson, Attorney for Respondent and its Insurance Carrier
Marcia Yates Roberts, Administrative Law Judge

⁷ K.S.A. 44-534a.

⁸ K.S.A. 2010 Supp. 44-555c(k).